

RULES GOVERNING THE UNAUTHORIZED PRACTICE OF LAW

Article 1

STATEMENT OF INTENT

Every jurisdiction in the United States recognizes the inherent right of individuals to represent themselves in legal matters. In contrast, the privilege of representing others in our system is regulated by law for the protection of the public, to ensure that those who provide legal services to others are qualified to do so by education, training, and experience and that they are held accountable for errors, misrepresentations, and unethical practices.

Nonlawyers may be untrained and inexperienced in the law. They are not officers of the courts, are not accountable for their actions, and are not prevented from using the legal system for their own purposes to harm the system and those who unknowingly rely on them.

The following rules are promulgated by the Nebraska Supreme Court pursuant to its inherent authority to define and regulate the practice of law in this state. The purpose of the rules is to protect the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized practice of law.

Article 2

DEFINITIONS AND SUBSTANTIVE PROVISIONS

2.1 General Definition

The “practice of law,” or “to practice law,” is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge, judgment, and skill of a person trained as a lawyer. This includes, but is not limited to, the following:

2.1.1 Giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to whom it is given.

2.1.2 Selection, drafting, or completion, for another entity or person, of legal documents which affect the legal rights of the entity or person.

2.1.3 Representation of another entity or person in a court, in a formal administrative adjudicative proceeding or other formal dispute resolution process, or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

2.1.4 Negotiation of legal rights or responsibilities on behalf of another entity or person.

2.1.5 Holding oneself out to another as being entitled to practice law as defined herein.

2.2 Other Definitions

2.2.1 Definition of “Nonlawyer”

The term “nonlawyer” means any person not duly licensed or otherwise authorized to practice law in the State of Nebraska. The term also includes any entity or organization not authorized to practice law by specific rule of the Supreme Court whether or not it employs persons who are licensed to practice law.

2.2.2 Definition of “Entity”

The term “entity” means a sole proprietorship, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or a common interest, or any other legal or commercial entity.

2.2.3 Definition of “Organization”

The term “organization” means two or more entities characterized by common administrative and functional structure or common ownership and/or control.

2.3 General Prohibition

No nonlawyer shall engage in the practice of law in Nebraska or in any manner represent that such nonlawyer is authorized or qualified to practice law in Nebraska except as may be authorized by published opinion or court rule.

2.4 Exceptions and Exclusions

Whether or not they constitute the practice of law, the following are not prohibited:

2.4.1 Title insurance companies authorized to do business in the State of Nebraska and their licensed agents, real estate rental agencies, licensed real estate brokers and their affiliated licensees, and employees of such entities, preparing certain documents that would normally involve the practice of law subject to the following:

(a) The transaction involved is merely incidental to their lawful business as a title insurance company or licensed agent thereof, rental agency, real estate broker, or affiliated licensees of a real estate broker.

(b) The transaction arises in the usual course of business for the title insurance company issuing title insurance, the rental agency as agent for the lessor or the lessee, the broker who is the listing or selling broker, or the real estate licensee affiliated with the broker.

(c) Licensed real estate brokers and their affiliated licensees, as agents for the seller and/or buyer, may prepare purchase agreements and contracts of sale.

(d) Real estate rental agencies representing the lessor and/or lessee may prepare residential, commercial, or farm leases.

(e) In closing a real estate sale, licensed real estate brokers and title insurance companies and their licensed agents may prepare deeds, releases which do not affect judgment liens, deeds of reconveyance, title affidavits, closing statements, and related documents.

(f) The documents referred to 2.4.1(c), (d), and (e) to be prepared by nonlawyers shall be on standardized forms which may contain various blanks to be filled in, the completion or selection of which does not require the knowledge, judgment, or skill of one trained as a lawyer.

(g) No counsel or advice shall be given with respect to the meaning, validity, or legal effect of the document or regarding the rights and obligations of the parties.

2.4.2 Licensed abstractors preparing or extending abstracts without rendering opinions as to the character of the title. A title insurance company authorized to do business in the State of Nebraska, including its licensed agents, may review public records and specify any curative work or describe conditions which must be fulfilled before it will issue a title insurance policy in connection with a proposed real estate transaction, but may not render opinions, counsel, and advice to others regarding the marketability or status of titles.

2.4.3 Nonlawyers appearing in a representative capacity before an administrative tribunal or agency, subject to the following:

(a) A nonlawyer may appear in a representative capacity before a federal administrative tribunal or agency to the extent permitted by such tribunal or agency.

(b) A nonlawyer who is an employee, member, or officer of an entity or organization may represent such entity or organization before an administrative tribunal or agency of the State of Nebraska, or a political subdivision of the State of Nebraska, if all of the following conditions are met:

(1) The tribunal, agency, or political subdivision permits representation of parties by nonlawyers;

(2) The nonlawyer employee, member, or officer is specifically authorized by the entity or organization to appear before the tribunal, agency, or political subdivision on its behalf;

(3) Such representation is not the primary duty of the nonlawyer employee, member, or officer to the entity or organization, but is secondary to other duties relating to the management or operation of the entity or organization;

(4) The nonlawyer employee, member, or officer does not receive separate or additional compensation (other than reimbursement for costs) for such representation;

(5) The representation does not involve a claim that the tribunal, agency, or political subdivision's action or the action of another person is illegal as a matter of law or unconstitutional; and

(6) The Nebraska Evidence Rules as applicable in the district courts do not apply to the administrative proceeding.

(c) A nonlawyer may represent an unrelated party before an administrative agency or tribunal of the State of Nebraska if all of the following conditions are met:

- (1) The agency or tribunal permits representation of parties by nonlawyers;
- (2) The party knows that the representative is a nonlawyer and authorizes such person to appear on behalf of the party in a particular proceeding;
- (3) The representation does not involve a claim that the agency action or action of another person is illegal as a matter of law or unconstitutional;
- (4) The representation does not require the knowledge, judgment, or skill of a lawyer or the preparation of legal briefs; and
- (5) The Nebraska Evidence Rules, as applicable in the district courts, do not apply to the administrative proceeding.

2.4.4 Nonlawyers serving in neutral capacities as mediators, arbitrators, conciliators, or facilitators.

2.4.5 Nonlawyers participating in labor negotiations, employee disciplinary hearings, employment grievances, arbitrations, mediations, or conciliations arising under collective bargaining rights or agreements or state or federal law, provided, however, that the Nebraska Evidence Rules, as applicable in district courts, do not apply or the Federal Rules of Evidence do not apply.

2.4.6 Nonlawyers acting as lobbyists.

2.4.7 Nonlawyers selling legal forms in any format, so long as they do not advise or counsel another regarding the selection, use, or legal effect of the forms.

2.4.8 With respect to tax laws:

(a) Nonlawyers preparing tax returns.

(b) Nonlawyers representing other persons, entities, or organizations before the Internal Revenue Service, the Nebraska Department of Revenue, or any other state or local taxing authority in Nebraska to the extent permitted by such agency or taxing authority.

(c) Nonlawyers practicing before the U.S. Tax Court in conformity with its rules.

2.4.9 Provision of the following services by certified public accountants who are authorized to practice accountancy in the State of Nebraska:

(a) Providing advice on all taxes of any kind.

(b) Issuing financial statements including, but not limited to, attestations, reviews, and compilations, and rendering opinions thereon.

(c) Advising a third party regarding any fact or matter on which the certified public accountants have a statutory or regulatory duty to report to that party.

(d) Preparing, at the request of the client or the client's lawyer, language for proposed inclusion in a legal document being prepared by the client's lawyer.

(e) Providing financial and managerial advice.

Nothing herein shall be deemed to authorize certified public accountants to draft legal documents or provide legal advice except as provided in 2.4.9 (a), (b), (c), and (d).

2.4.10 Nonlawyers providing information about the application of the law to a product or service which the nonlawyer is otherwise lawfully authorized to provide to the public.

2.4.11 Nonlawyer or lawyer employees or members of an entity or organization providing information or education about law, regulations, legal procedures, and compliance issues for the purpose of training other employees or members of the entity or organization.

2.4.12 Nonlawyer employees of an entity or organization preparing legal documents that are incidental to the entity's or organization's business and connected with any transaction in which the entity has a direct, primary, and nonfiduciary interest, or a fiduciary interest required by federal law.

2.4.13 Nonlawyers in the business of serving as fiduciaries, providing beneficiaries and interested persons with advice regarding the meaning, effect, and legal impact of wills, trusts, or plans and preparing documents incidental to the administration thereof.

2.4.14 Nonlawyer employees of an entity or organization engaging in the activities described in 2.1.1, 2.1.2, and 2.1.4 for the sole benefit of the entity or organization.

2.4.15 A nonlawyer entity or organization which employs lawyer employees to perform the activities described in 2.1 for such entity, other entities within the organization, or in the case of privately held entities or organizations, for owners and their families, officers, directors, or employees of the entity or organization.

2.4.16 A nonlawyer entity or organization acting through lawyer employees to the extent such lawyers perform pro bono legal services for nonprofit organizations, low-income clients, or otherwise in the public interest.

2.4.17 A nonlawyer entity or organization acting through lawyer employees providing legal services, without direct payment therefor, to a party other than a party described in 2.4.15, in a manner consistent with the Nebraska Rules of Professional Conduct (including, without limitation, the rules relating to conflicts of interest and fee sharing), so long as the entity or organization has a financial interest in the outcome of the legal services, there is a commonality of purpose between the entity or organization and the third party, and the entity or organization is not otherwise in the business of providing legal services except as provided in these rules.

2.4.18 An entity or an organization in the business of insurance, guarantee or indemnity utilizing a lawyer employee or captive lawyer admitted to the bar in Nebraska or otherwise authorized to practice law in Nebraska to represent its insured, principal, or a noninsured for whom a defense is provided under a reservation of rights, so long as there is a commonality of purpose between the entity or organization and the insured, principal, or noninsured, and the lawyer employee or captive lawyer is able to comply with the Nebraska Rules of Professional Conduct.

2.4.19 An entity or organization in the business of insurance or a self-insured entity or organization may, for the purpose of adjusting claims against it or its insured, prepare certain documents, provide information to, and negotiate with other persons or entities if all of the following conditions are met:

- (a) The transaction involved is incidental to the lawful business of the insurance company or self-insured;
- (b) The transaction arises in the usual course of business of the insurance company or the self-insured;
- (c) The transaction may be carried out by an employee, a third party administrator or agent legally authorized to adjust claims on behalf of the insurance entity or organization or the self-insured; and
- (d) There shall be no charges to any person or entity making a claim against the insurer or self-insured.

2.4.20 Nonlawyer employees and supervised volunteers of nonprofit entities whose primary purpose is assisting domestic violence and sexual assault victims, which nonlawyers may assist victims with the following:

- (a) Distributing pro se forms for harassment and protection orders prescribed by the Nebraska Supreme Court and assisting victims in the preparation of such forms.
- (b) Describing to victims the proceedings under the Protection from Domestic Abuse Act.
- (c) Accompanying victims throughout all stages of proceedings under the Protection from Domestic Abuse Act.
- (d) Attending all court proceedings including, at the judge's discretion, sitting in chambers, sitting at counsel table to confer with victims, or responding to inquiries by the court. However, they shall not examine witnesses, make arguments to the court, or otherwise act in a representative capacity for the victims.

2.4.21 Nonlawyers making any disclosure or advisement, which is required by state or federal law.

2.4.22 Financial institutions and their nonlawyer employees, preparing documents relating to transactions, if all of the following conditions are met:

- (a) The transaction involved is related to the lawful business of the financial institution;
- (b) The transaction arises in the usual course of business for the financial institution;
- (c) The transaction requires the preparation of security agreements, financing statements, assignments, termination statements, effective financing statements, releases, deeds of reconveyance, promissory notes, deeds of trust, mortgages, and similar types of financial documents; and

(d) The documents referred to in 2.4.22(c) to be prepared by nonlawyers shall be on standardized forms which may contain various blanks to be filled in, the completion or selection of which does not require the knowledge, judgment, or skill of one trained as a lawyer.

2.4.23 Nonlawyers engaging in any other activity which the Supreme Court determines, by published opinion or court rule, does not constitute the unauthorized practice of law.

2.5 Nonlawyer Assistants

Nothing in these rules shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with rule 5.3 of the Nebraska Rules of Professional Conduct.

2.6 Certain Organizations

Nothing in these rules shall affect the ability of certain organizations, through the use of lawyers, to offer the services described in article IV of the Supreme Court's rule on Professional Service Corporations or article IV of the Supreme Court's rule on Limited Liability Professional Organizations.

2.7 General Information

Nothing in these rules shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

2.8 Governmental Agencies

Nothing in these rules shall affect the ability of a governmental agency to carry out responsibilities provided by law.

2.9 Professional Standards

Nothing in these rules shall be taken to define or affect standards for civil liability.

Article 3

PROCEDURE

3.1 Jurisdiction

Except as otherwise provided by 3.3.2 herein, the Supreme Court, in the exercise of its inherent jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Nebraska, adopts the following procedures, which shall govern proceedings under these rules concerning the unauthorized practice of law.

3.2 Commission, Creation

3.2.1 There is hereby created a Commission on Unauthorized Practice of Law. The Commission shall be composed of the following members:

(a) Six attorneys licensed to practice law in the State of Nebraska who shall be nominated by the Executive Council of the Nebraska State Bar Association and appointed by the Supreme

Court (one attorney member of the Commission shall be appointed from each of the six Supreme Court districts in the state).

(b) Three laypersons who shall be appointed by the Supreme Court (one layperson shall be appointed from each congressional district in the state).

3.2.2 Members of the Commission shall serve for terms of 3 years, beginning on the first day of the month after the adoption of these rules, provided that at the time of the implementation of these rules, two attorney members and one layperson shall be appointed for 3 years, two attorneys and one layperson for 2 years, and two attorneys and one layperson for 1 year. Every subsequent appointment shall be for a term of 3 years.

3.2.3 The Chief Justice shall appoint one member to chair the Commission.

3.2.4 Membership on the Commission may be terminated by the Supreme Court at its pleasure, and members may resign at any time. Any vacancy shall be filled by the Chief Justice for the unexpired term.

3.2.5 The Commission shall adopt rules providing for the time and place of its meetings, the selection of a member to serve as vice chair, and other officers, and such other rules not in conflict with the rules of the Supreme Court as may be necessary for the conduct of its business.

3.2.6 The Commission by its own rules may sit as three-member panels consisting of two attorneys and one layperson and establish quorums required for its meetings.

3.2.7 Any rules adopted by the Commission shall be subject to approval by the Supreme Court.

3.2.8 Members of the Commission shall be entitled to reimbursement for reasonable expenses incurred in the performance of their official duties.

3.3 Commission, Jurisdiction and Duties

3.3.1 Except as otherwise provided by 3.3.2 herein, the Commission shall have jurisdiction over all complaints made by any person or entity alleging the unauthorized practice of law under these rules. The Commission may inquire into any matter pertaining to the unauthorized practice of law on its own motion.

3.3.2 Nothing contained in these rules shall be construed as a limitation upon the jurisdiction or authority of any court or judge thereof to punish for contempt any person or other entity not having a license from the Supreme Court attempting to practice law within the jurisdiction of said court, nor shall these rules be construed as a limitation upon any civil remedy or criminal proceeding which may otherwise exist with respect to the unauthorized practice of law.

3.3.3 All matters within the jurisdiction of the Commission shall be referred to the Counsel on Unauthorized Practice of Law (CUPL) for screening and investigation. Upon completion of such investigation, the CUPL shall report in writing to the Commission. The Commission may dismiss allegations, request further investigation, offer the respondent the opportunity to enter into a written consent agreement, enter into negotiations with the respondent resulting in a consent decree to be presented to the Supreme Court for approval, or take such other action as may be appropriate under these rules. The Commission, acting through the CUPL, may petition the Supreme Court for such formal relief as it deems appropriate under these rules.

3.3.4 The Commission may, when asked in writing by an interested member of the public or by a member of the Nebraska State Bar Association, issue advisory opinions regarding the unauthorized practice of law as defined and regulated by the Supreme Court. The purpose of such advisory opinions shall be to inform the public and the bar as to what activities violate these rules but shall not be construed as binding the Supreme Court in carrying out its duty of regulating and defining the practice of law.

3.3.5 The Supreme Court hereby appoints the Executive Director of the Nebraska State Bar Association as Secretary of the Commission.

3.4 Counsel, Appointment and Duties

3.4.1 There shall be a Counsel on Unauthorized Practice of Law (CUPL), who shall be a member of the Nebraska State Bar Association.

3.4.2 The CUPL shall be an employee of the Nebraska State Bar Association, which shall fund the operations of the office of the CUPL.

3.4.3 The CUPL shall perform for the Commission all duties as required by these rules.

3.4.4 The CUPL shall investigate all matters within the jurisdiction of the Commission in accordance with procedures adopted by the Commission and shall perform the following duties:

(a) Maintain records of all matters coming within the jurisdiction of the Commission.

(b) Secure facilities for the administration of proceedings under these rules and receive and file all requests for investigation and complaints concerning matters within the jurisdiction of the Commission.

(c) Employ such staff, including investigative and clerical personnel, subject to the approval of the Commission, as may be necessary to carry out the duties of the office.

(d) Perform such other duties as the Commission or the Supreme Court may require.

3.5 Investigation; Consideration by Commission

3.5.1 All complaints regarding the unauthorized practice of law under these rules shall be filed with the CUPL. All complaints received by any Commission member, the Commission secretary, or by any other person shall be transmitted forthwith to the CUPL. All complaints regarding the unauthorized practice of law shall be received, screened, and investigated by the CUPL, who shall, upon completion of his or her investigation, make a written report of the investigation, findings, and recommendation for disposal to the Commission. The CUPL may determine that the conduct in question does not constitute the unauthorized practice of law and recommend to the Commission that the complaint be dismissed. If the CUPL determines that the conduct constitutes the unauthorized practice of law, the CUPL shall recommend appropriate remedial action to the Commission.

3.5.2 In connection with an investigation by the CUPL, the Commission, through its chair or a chair of a designated panel thereof, may issue subpoenas and subpoenas duces tecum to compel

the attendance of the respondent and other witnesses in the production of pertinent books, records, papers, documents, or evidence to the CUPL.

3.5.3 Any person subpoenaed to appear and give testimony or to produce materials, or any person having been sworn to testify and who refuses to answer any proper question, may be cited for contempt in proceedings instituted by the Commission in the Supreme Court pursuant to these rules.

3.5.4 The CUPL, or such other persons designated by the CUPL to conduct investigations, shall have the power to administer oaths and affirmations and to take and have transcribed the testimony and evidence of witnesses.

3.5.5 Upon the report of the investigation by the CUPL, the Commission, or a designated panel thereof, shall make an independent judgment regarding the investigation. It may dismiss the matter and so direct the CUPL to provide written notice of such dismissal to the complainant, if any, and to the respondent. It may determine that the conduct of the respondent merits further proceedings, and in such event, the respondent shall be notified that an investigation is being undertaken and the respondent shall be served personally or by certified mail with findings of the Commission or its panel of activities constituting the unauthorized practice of law and the rules governing the investigation and disposition thereof.

3.5.6 With the service of the findings of the Commission, or at any time thereafter, the Commission may request that a written answer to the findings of the Commission be filed with the CUPL within 20 days following the receipt of the notice and/or the Commission may request the respondent to appear before the CUPL for an informal conference during which the respondent may be offered an opportunity to enter into a written consent agreement or consent decree to refrain from conduct constituting the unauthorized practice of law. The CUPL shall make a written report to the Commission of the answer and/or informal conference.

3.5.7 At any time in the process, the Commission may refer the matter back to the CUPL for further investigation.

3.5.8 At any time after a finding by the Commission that the respondent has been involved in the unauthorized practice of law, the Commission may determine that civil injunction proceedings, as provided under these rules, shall be instituted against the respondent.

3.6 Civil Injunction

3.6.1 If the Commission determines that civil injunction proceedings shall be instituted against a respondent, it shall direct that such proceedings may be commenced in the name of the Commission by a petition filed in the Supreme Court by the CUPL or by a member of the bar appointed by the Supreme Court for the purpose of conducting such proceedings.

3.6.2 The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts complained of. The petition shall specify requested relief which may include injunction and assessment of the costs of the proceeding. The petition shall be served upon the respondent as provided in Neb. Rev. Stat. § 25-505.01 for service of process in civil cases.

3.6.3 The respondent shall file with the Supreme Court within 30 days after service a written answer admitting or denying the matter stated in the petition. Thereafter, the matter shall proceed as provided in the Nebraska Rules of Pleading in Civil Actions.

3.6.4 If no written answer is filed within the time permitted, the Supreme Court, upon its motion or upon the motion of the Commission or its counsel, shall decide the case, granting such relief and issuing such other orders as may be appropriate.

3.6.5 If a written answer raises no question of material fact, any party by motion may request a judgment on the pleadings and the Supreme Court may decide the case as a matter of law, granting such relief and order as may be appropriate.

3.6.6 Upon the Supreme Court's order, questions of fact raised in proceedings under these rules shall be referred to a Hearing Master to be appointed for that purpose.

3.7 Civil Injunction Proceedings; Hearing Master, Powers and Procedure

3.7.1 Civil injunction proceedings before a Hearing Master shall be held in Lincoln, Nebraska. In the discretion of the Hearing Master, the proceedings may be held in the county where the respondent resides or where acts constituting unauthorized practice of law are alleged to have occurred.

3.7.2 The Commission may be represented in a proceeding before the Hearing Master by the CUPL, or by a duly licensed member of the Nebraska State Bar Association appointed by the Supreme Court for such purpose. The Hearing Master shall set a time and place for the hearing and shall dispose of any motions which may expedite the proceedings.

3.7.3 The parties may compel the attendance of witnesses before the Hearing Master by the issuance of subpoenas which shall run in the name of the Supreme Court and may be issued by the Hearing Master or Clerk of the Supreme Court upon the request of a party. All such subpoenas shall be subject to the provisions of Neb. Rev. Stat. § 25-1223 et seq. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be contempt of the Supreme Court and may be punished accordingly.

3.7.4 Unless waived by the parties with the approval of the Hearing Master, the Nebraska Evidence Rules shall be applicable when not inconsistent with these rules. Subject to any limitations in the order of reference, the Hearing Master shall have the powers generally reposed in a "Court" under the Nebraska law. At all hearings before a Hearing Master, witnesses shall be sworn and a complete record made of all proceedings had and testimony taken by a competent court reporter.

3.8 Civil Injunction Proceedings; Report of Hearing Master and Exceptions

3.8.1 After the hearing, the Hearing Master shall report in writing to the Supreme Court in accordance with the order of reference, setting forth findings of fact and recommendations for final disposition of the case. The original record, including a transcript of the proceedings and all exhibits, shall be filed with the report. Promptly after the report is filed with the Supreme Court, the Clerk shall mail copies thereof and a briefing schedule pursuant to 3.8.2, to all parties.

3.8.2 Exceptions to the report of the Hearing Master may be filed with the Supreme Court, by any party, within 30 days after copies of the report have been mailed to the parties. A brief may be

filed in support of such exceptions. Copies of such exceptions, and of any supporting briefs, shall be served upon all other parties. Any other party may file a responsive brief within 20 days after service of a brief in support of exceptions, and the excepting party may thereafter file a reply brief within 10 days after service of the responsive brief.

3.8.3 A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Supreme Court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Supreme Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

3.9 Civil Injunction Proceedings; Determination by Supreme Court

3.9.1 After de novo review of the proceedings before the Hearing Master, and upon consideration of any exceptions and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine as a matter of law whether the respondent has been engaged in the unauthorized practice of law. If the Supreme Court finds that the respondent was engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law and make such further orders as it may deem appropriate, including restitution and the assessment of costs.

3.9.2 Nothing in these rules shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of the proceeding in order to prevent public harm.

3.10 Contempt Proceedings

3.10.1 Noncompliance with any order issued by the Supreme Court regarding the unauthorized practice of law shall be contempt of the Supreme Court punishable as provided in Neb. Rev. Stat. §§ 25-2121 through 25-2123, inclusive.

3.10.2 If the Commission determines that contempt proceedings shall be instituted against a respondent or the Supreme Court directs the Commission to institute such action, such proceedings may be commenced in the name of the Commission by an application filed in the Supreme Court by the CUPL or by a member of the Nebraska State Bar Association in good standing appointed by the Supreme Court for the purpose of conducting such proceedings.

3.10.3 The application shall allege facts indicating that the respondent has previously been enjoined by the Supreme Court from engaging in the unauthorized practice of law and is in willful disobedience of the order of injunction of the Supreme Court by continuing to engage in the same conduct held to be the unauthorized practice of law in that order, and shall contain a prayer for the issuance of a contempt citation.

3.10.4 Upon the filing of an application, the Supreme Court may issue an order directing the respondent to show cause in writing why the respondent should not be held in contempt of the Supreme Court for the willful disobedience of the order and injunction of the Supreme Court.

3.10.5 If an order to show cause is issued, it shall be served upon the respondent, together with a copy of the application, and the citation shall specify the time for response. If a response is filed, the Supreme Court may appoint a Hearing Master to resolve disputed issues of fact.

3.11 General Provisions; Qualifications of Hearing Master; Access to Information Concerning Proceedings Under These Rules

3.11.1 A Hearing Master to whom matters are referred pursuant to these rules shall be a person who is duly licensed to practice law in Nebraska and in good standing with the Nebraska State Bar Association.

3.11.2 All proceedings conducted in the Supreme Court pursuant to these rules shall be public proceedings.

3.11.3 Except as otherwise provided by these rules or by order of the Supreme Court, all proceedings conducted pursuant to these rules prior to the filing of a petition in the Supreme Court shall be confidential, and the records of the Commission shall be confidential and shall not be made public unless and until such a petition is filed. Any person who violates this provision may be subject to punishment for contempt of the Supreme Court.

3.11.4 The pendency, subject matter, and status of the proceedings conducted pursuant to these rules may be disclosed by the CUPL to any of the following:

- (a) An agency authorized to investigate the qualifications of persons for admission to practice law;

- (b) A lawyer discipline enforcement agency;

- (c) Any person or agency requesting such information, provided that the respondent has waived confidentiality and the request is within the scope of the waiver; or

- (d) Any person appointed by the CUPL to assist in the prosecution of the alleged unauthorized practice of law.

Provided, however, 3.11.4 shall not be construed to prohibit the Commission from reporting the subject matter and disposition of a proceeding conducted pursuant to these rules for advisory purposes pursuant to 3.3.4.

3.11.5 Except as otherwise authorized by order of the Supreme Court, a request for confidential information shall be denied unless the request is made by any of the following:

- (a) An agency authorized to investigate the qualifications of persons for admission to practice law;

- (b) An agency authorized to investigate the qualifications of persons for government employment;

- (c) An agency authorized to investigate allegations of unauthorized practice of law;

- (d) An agency authorized to investigate the qualifications of judicial candidates; or

- (e) A lawyer discipline enforcement agency.

3.11.6 If any one of the above-enumerated agencies requests confidential information and has not received a written authorization from the respondent permitting such agency to obtain confidential information, the Commission shall give written notice to the respondent that disclosure of confidential information has been requested. In addition, the Commission shall send to the respondent a copy of any information which the Commission proposes to release to the requesting agency. The Commission shall inform the respondent that the information indicated shall be released to the requesting agency at the end of 20 days after notice of the request was mailed unless the respondent obtains an order from the Supreme Court restraining such disclosure. Among the factors which the Supreme Court will consider in determining whether to restrain such disclosure is whether the requesting agency will accord confidentiality to the requested information.

3.11.7 If a judicial nominating commission of the State of Nebraska requests confidential information, it shall be furnished promptly and the CUPL shall give written notice to the respondent that specified confidential information has been so disclosed.

3.11.8 A respondent may be represented by counsel at any stage of proceedings conducted under these rules.

3.12 Immunity

Persons performing official duties under the provisions of these rules, including, but not limited to, the Commission, the CUPL and his or her staff, members of the Nebraska State Bar Association appointed to assist in the prosecution of alleged unauthorized practice of law, and Hearing Masters shall be immune from suit for all conduct in the course of their official duties.

Adopted October 10, 2007; effective January 1, 2008.